

REMARKS

This is in response to the Office Action mailed on November 17, 2004, and the references cited therewith.

Claims 1, 8, 17, 18, 23, and 32 are amended; as a result, claims 1-35 are now pending in this application.

§101 Rejection of the Claims

Claims 18-22 were rejected under 35 USC § 101 because the claimed subject matter is directed to non-statutory subject matter. Applicant notes the Examiner has provided no factual reasons as to why the Examiner considers the subject matter of claim 18 to be nonfunctional data and therefore considered non-statutory.

MPEP Sec. 2106 controls the determination as to what is to be considered functional and nonfunctional data for purposes of 35 USC § 101. The invention as a whole within the claim must be considered. It is also noted in MPEP Se. 2106 (IV)(B)(1)(b) that nonfunctional descriptive material may be claimed in combination with other functional descriptive material. In fact, music notes are used as an example of acceptable statutory subject matter when combined within a claim to include functional aspects that cause functional change in a computer.

Applicant believes that because the preamble was worded simply as an image residing within a computer-readable medium that the Examiner took this to be similar to printed material having no functional aspects. However, the amended claim 18 now recites that the image is implemented in a computer-readable medium; rather than simply residing. Moreover, the adjective “warped” that prefixes image in the preamble imparts function in that it explains a particular type of image that undergoes a process, namely warping. Additionally, the body of the claim now clearly recites functional language in that the pixel lattices are adapted to be produced by a set of executable instructions and each pixel lattice is adapted to be generated from pixels having a weight that represents a two-dimensional warping scale. The image is in fact a data structure having functional material that alters a processing within a computer. This can be clearly demonstrated by the weight that represents a two-dimensional warping scale.

Applicant asserts that functional interrelationship has been demonstrated within the preamble and body of amended claim 18. Moreover, the image is in fact a data structure and functional aspects within the data structure permit changes within a computer, namely the weights. Thus, Applicant does not believe that claim 18 is nonfunctional data.

If the Examiner continues to disagree with this, Applicant asserts that a subsequent Final with respect to this rejection is inappropriate because the Examiner has not provided a factual basis for this rejection. Applicant also asserts that with 35 USC § 101 rejections it is incumbent upon the Examiner to clearly articulate specific factual reasons and conclusions for the stated rejections and to assist applicant with suggested modifications to the rejected claims to overcome the rejection. In this office action, this has not occurred. As a result, Applicant cannot discern why the rejection is being maintained and has attempted to guess at the rationale of the Examiner. Therefore, a Final in response hereto is inappropriate.

Applicant believes that amended claim 18 is no longer nonfunctional data; that claim 18 includes functional aspects that affect the processing of a computer; thus, Applicant respectfully requests that the 35 USC § 101 be withdrawn as they have been overcome with the amendments and remarks presented herein.

§102 Rejection of the Claims

Claims 1-12, 15-20, 23-30 and 32-35 were rejected under 35 USC § 102(e) as being anticipated by McKeown (U.S. Patent No. 6,670,965). It is of course fundamental that in order to sustain an anticipation rejection that each and every step or element in the rejected claims must be taught or suggested in the cited reference.

In McKeown, a single pass warping technique is taught. In McKeown, the scaling associated with a warping function is not combined within the weights. Moreover, weights are not products of each separate dimension obtained by multiplying the separate dimensions against one another. For example, in McKeon weights are described as averages not products and each weight is associated with a single dimension not two dimensions. *E.g.*, McKeown, col. 5, lines 36-67.

Conversely, Applicant's amended independent claims now state that a single weight is associated with scaling factors from both dimensions and is obtained as a product of the scaling

factors from the separate dimensions. McKeown's approach is different in that scaling factors are not included within the weights, each weight is associated with a single dimension, and weights are obtained as averages and not products of separate dimensions scaling factors multiplied against one another.

Accordingly, there are substantial differences between McKeown's weights and Applicant's weights and substantial differences in how weights are acquired and used. Therefore, the rejections with respect to McKeown are no longer appropriate and should be withdrawn.

§103 Rejection of the Claims

Claims 13, 14, 22 and 31 were rejected under 35 USC § 103(a) as being unpatentable over McKeown. Claims 13 and 14 are dependent from amended independent claim 8, claim 22 is dependent from amended independent claim 18, and claim 31 is dependent from amended independent claim 23. Therefore, for the amendments and remarks presented above with respect to claims 8, 18, and 23, the rejections with respect to claims 13, 14, 22, and 31 should be withdrawn.

Claim 21 was rejected under 35 USC § 103(a) as being unpatentable over McKeown in view of applicants admitted prior art. Claim 21 is dependent from amended independent claim 18. Thus, for the amendments and remarks presented above with respect to claim 18, the rejection with respect to claim 21 should be withdrawn.

Moreover, Applicant reserves the right to later argue the Examiner's assertion regarding admitted prior art. Applicant does not address this point herein, since Applicant feels the amendments and remarks presented above with respect to independent claim 18 makes this argument at this point in time unnecessary. However, if necessary, Applicant reserves the right to address this assertion by the Examiner in subsequent responses hereto. Therefore, Applicant believes it is not necessary to characterize the Examiner's conclusion about admitted prior art with this response and Applicant refutes any such characterization made by the Examiner and reserves the right to argue this point in later responses, if necessary.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date Feb 2-1-2005

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 1 day of February, 2005.

Craig M. Moore
Name

John V. Jones
Signature

IN THE DRAWINGS

Corrected drawings are supplied herewith.

The Examiner did not specify what the specific objections to the drawings were; rather, the Examiner stated the drawings were not acceptable for purposes of publication and suggested the Applicant employ a draftsman. The Applicant takes this to mean that the Examiner wanted formal drawings. The formal drawings are supplied herewith. Replacement drawings 1-5 are supplied in formal electronic format. Applicant believes that this complies with the Examiner's request and that the objections are no longer appropriate and therefore should be withdrawn.